Lewis County Planning Commission
Public Meeting
Lewis County Courthouse
351 NW North St.
Chehalis, WA 98532

September 27, 2011 – 7:00 p.m.
Meeting Notes

Planning Commissioners Present: Bob Guenther, Mike Mahoney, Russ Prior, Jim Lowery, Bill Russell, Richard Tausch, Arny Davis
Staff Present: Glenn Carter, Fred Chapman, Lynn Deitrick, Jerry Basler, Pat Anderson
Others Present: Please see sign in sheet

Handouts/Materials Used:

- Agenda
- Meeting Notes from August 23, 2011
- Draft Code Chapters: Fences, 17.145.140; Utility lots, 16.020.040; Code Compliance, 17.300

I. Call to Order

Chairman Russell called the meeting to order at 7:02 p.m. The Commissioners introduced themselves.

II. Old Business

A. Approval of meeting notes from August 23, 2011

The Chair entertained a motion to approve the meeting notes from August 23, 2011. Commissioner Guenther made the motion, Commissioner Prior seconded. The motion carried.

B. Workshop on Draft Code Chapters

Mr. Deitrick stated there were some discussions at the previous meetings regarding the code chapter 17.145.140 (fences) to try to tailor it so it would address agricultural activities. Mr. Deitrick removed anything that discussed agriculture. He asked Mr. Chapman, Lewis County Building Official, to attend the meeting in the event there should be questions regarding the building code. Most of the permitting process would be for building permits; this chapter has to do with zoning issues for fence heights.

Mr. Deitrick stated there were no changes made to the utility lots chapter. Regarding code compliance, there was some discussion with other departments about who would have responsibility and those have been changed to the applicable county department or designee. There were some assumptions by some departments that the sole responsibility was with Community Development and that is not necessarily true. Because this section deals with other portions of the code with responsibilities under the Health Department or Public Works, they could initiate this section as well. That is the major change from the other draft versions.

Mr. Deitrick stated after the Planning Commission's deliberations, a public hearing on the code amendments should be set for October 25, 2011.

Commissioner Mahoney spoke to the fence chapter. He understands the rules and regulations apply only to fences 6 feet and higher and only on the boundary lines. Mr. Deitrick stated that was correct.

Commissioner Mahoney stated under 3 (c)(iii), "Supporting members of the fence shall face the principal portion of the tract of land…." He asked for verification that that only applies to taller fences on property lines. Mr. Deitrick stated yes.

Commissioner Davis was supportive of the additional verbiage in the draft chapter. He asked if it was possible to apply for a variance for a special set of circumstances. Mr. Deitrick said that would be possible.

Further discussion followed regarding permits for any fencing over six feet. Mr. Chapman stated the law for 6 foot fences has been in effect since the 1970's.

Commissioner Lowery asked how the public would know whether or not they need a permit – where is it published. Mr. Chapman stated the information is available on the county web site under building regulations, Title 15. The issue is when people start building sight-obscuring fences and if fences are over 6 feet and not built properly they can be dangerous during high winds.

Chairman Russell suggested that under (3) the word "may" be changed to "will". If someone does all that is required, is a permit going to be denied? Mr. Deitrick noted that section (vii) states that Public Works and other departments need to determine that a fence is built according to code. The issues in this section deal with zoning requirements. There are other regulations that are not covered in here.

Chairman Russell stated everything that needs to be said is in the first sentence: if a person complies with all of the parts of this chapter, shouldn't a permit be issued? Mr. Deitrick stated other departments have their own regulations and if the requirements are met, Chairman Russell is correct.

Chairman Russell stated if a person jumps through all these hoops, the permit should be issued. Also, in subsection (vi) he suggested "wall" should be stricken.

Commissioner Prior stated he compared these drafts with the last drafts and asked for clarification in the changes of some words and numbers. Mr. Deitrick stated every draft is going to have some changes from the previous version. Sometimes text is taken from another jurisdiction's code and that format is brought forward also. Later versions will be consistent with Lewis County's format or verbiage.

Chairman Russell addressed Chapter 17.300. Under .020, Applicability, the word "taken" did not seem appropriate. He was unsure of what the code is trying to say. Mr. Carter suggested "activity on a property that is contrary to any provision…"

.023 (C)(1) – Chairman Russell asked how the purchaser could not be considered innocent if the seller has not disclosed a notice of violation.

Mr. Carter stated (B) should be looked at first. He read the section. Someone can be considered innocent if they provide evidence that demonstrates that the owner had no knowledge of the unpermitted development. That provides a way out for a person who does not have knowledge.

Chairman Russell stated the question is if he (Russell) was going to sell a piece of property and he knows that the building has to come down and doesn't disclose that and the buyer has no way of finding out about that. Mr. Carter stated the problem with (C) (1) is if the notice of violation was not recorded then the buyer would be innocent. Perhaps it should say recorded notice of violation. He is not aware of recorded notices of violation. If the county does not do that how would a person find it? Chairman Russell stated that is his issue.

Mr. Carter thought it might have intended to say recorded, or it intends to say if someone has actual knowledge he is not innocent. He suggested that he and Mr. Deitrick go through it to determine the correct verbiage.

.030 (C) – The word "buildings" should be removed.

.040 – (1) and (2) could be combined rather than have two separate sub-sections.

.040 (4) – Chairman Russell thought this should read "any two or combination…" because (B)(4)(a) states "regular first class and certified mail". Discussion followed.

Mr. Carter stated for most legal matters the pleadings are sent via first class mail, not certified with return receipt requested. There is a presumption in the law that if something is sent first class mail with a declaration of service that the other side has received it, then the other side has the burden of proof of establishing that they have not. Certified with return receipt does not take care of the problem because people do not sign for it. Personal service is very expensive. None of these are going to guarantee that the notice will get to the person.

Mr. Deitrick stated the Health Department, which includes code enforcement, has reviewed this section of code and they specifically asked for these combinations to be included. They want the options of being able to do the noticing either by personal or certified mail and would like the opportunity to use those different avenues.

Commissioner Lowery stated when he read it he thought it meant one or a combination of uses, whichever worked best. He agreed with Mr. Carter that the Commissioners should not want to micro manage to the extent that the best options are excluded.

Mr. Deitrick stated Mr. Bill Teitzel, Code Enforcement Officer, sent a memo dated August 15, 2011 that stated his current policy is to send certified first, first class only if there is no response by certified mail.

Commissioner Prior addressed 17.300.050 (G)(1). He thought the word "deposit" needs to be defined somehow. Is it sand, soil, debris? Mr. Deitrick stated he would talk to Public Works to see how it is defined and incorporate it or reference it.

Chairman Russell asked if there would be time to make these changes before there is a public hearing on October 25. Mr. Deitrick stated he would like to present it back to the Commissioners before it goes to a public hearing and suggested a work session on the 25th.

Commissioner Guenther suggested taking out "deposit" and leaving it as any obstruction. There was more discussion about the language. Commissioner Prior stated he could foresee a scenario where someone creates a deposit that does not fully obstruct something but later on a storm does create an obstruction which might not have occurred if the deposit had not been there in the first place or had not been removed. Reconsidering, he likes the word "deposit" in there with some type of definition.

Mr. Deitrick reiterated that he would discuss this with Public Works. He stated it was brought to his attention that if the work session is held on October 25th there would be a problem getting the code amendments to the BOCC this year. Another work session could be held on the 11th which would give him enough time to get a draft back to the Planning Commissioners.

Commissioner Mahoney liked the idea of talking to Public Works about the language.

Commissioner Mahoney made a motion to set the public hearing on the draft code amendments for October 25th which was seconded by Commissioner Tausch. The motion carried.

Mr. Basler stated before his update on the Subarea Plan he would like Mr. Carter to comment on a decision that came up with the rezones recently.

Mr. Basler stated the question pertained to a parcel in the south part of the county where the property owner wanted to go from ARL to RDD-5. His property is surrounded by agricultural land and rezoning it would have created a spot zone.

Commissioner Mahoney stated the argument from the Commissioners was that the property was too steep to be considered agricultural resource land (ARL) and as stipulated in the ordinance land owners were given an opportunity to show that their land had been designated incorrectly. If that was done, the land could be taken out of ARL.

Mr. Carter stated there was no black and white answer and there was not a legal answer. This is a piece of property that is very steep and surrounded by ARL. The steepness is the argument that it should not be considered ARL. The framework in the code is that the county can only de-designate when it finds that an error has been made, and the owner stipulates that an error was made because it is too steep to farm. The argument that was most likely made by the county in the original designation was that the county needed to be uniform and it would look like a spot zone to the Growth Management Board which could become an impediment to the process of compliance. Under 17.30.600 that could be considered an error with respect to that piece of property.

Commissioner Guenther agreed that the Commissioners did not want that property to stick out like a sore thumb but the ordinance stated if the property owners came back and gave a reasonable argument that their land was not suitable for ARL then the Commission would consider that. The owner did that but it was not de-designated.

Chairman Russell read the code that pertains to de-designation.

Mr. Carter stated this also pertains to the Mineral Lake property rezone, which was a rezone from Forest Resource Land of long-term commercial significance to Forest Resource Land of local importance. This

means that the minimum lot size goes from 80 acres to 20 acres. The BOCC rezoned 830 acres around Mineral Lake which went to the Growth Board. The Growth Board on the petition for review that was filed by three citizens made the determination that they did not have jurisdiction to consider the appropriateness of the interpretation of 5000 contiguous acres because that is a matter of Lewis County Code. They will leave it up to the BOCC to interpret the code. The Growth Board does have jurisdiction over the results of that interpretation. In this case, the Growth Board found that that interpretation left a zoning map and a land use map that was inconsistent in that there were other properties where there were less than 5000 contiguous acres, which from their perspective they deemed could be similarly situated lands. They are going to order the county to come back and identify those other parcels that are similarly situated to the Mineral Lake parcel and to consider the designation of those lands from FRL of long-term commercial significance to FRL of local importance.

Mr. Carter continued to say that why this is important to the point made by Commissioner Guenther, is that if we decide we want to rezone that piece of property under the theory of the Growth Board, we would have to identify those other potentially similarly situated lands that were designated ARL in error and consider them for de-designation in the same process.

Chairman Russell stated the Planning Commission has been trying to do that all along. Mr. Carter stated the argument on a petition for review to Superior Court is that the way in which the GMA addresses that kind of problem is in the cyclical update process. We don't do it every time we do a rezone because that would make every rezone a cyclical update and that is not what the legislature intended. The Growth Board has a chance to change that decision. The county has filed a motion for reconsideration but the appeal will need to be filed before they rule on that. If they rule in our favor, we may consider withdrawing the appeal.

Chairman Russell asked if 17.30.600 should be changed because our code says that when they bring in a letter saying there was an error then they will be de-designated. Mr. Carter stated if the Board is correct in what they have said on Mineral Lake, then yes, we could consider that error, but at the same time we could consider all the other properties. You don't need to say that explicitly in the code provision, but it would be implicit in it.

Chairman Russell asked if in the yearly update if the Planning Commission is not required to tweak the errors. Mr. Carter stated no; the cyclical update is every 6 or 7 years and is frequently extended by the legislature.

After further discussion, Mr. Carter stated the county needs to study the order, come back to the Planning Commission and figure out how to comply. He did not suggest compliance would come by looking all across the county; there may be other ways to do that. With respect to the escape clause, lawsuits have been filed against the county since the last ARL process that alleged that we do not have a sufficient escape clause.

Commissioner Mahoney stated what we do have, if it is allowed to work, is protection for our citizens and it still gives us some growth management. He believes when it is written into the ordinance, and we ask people to go through these steps, then we should listen.

Mr. Carter stated it is not only the escape valve; it is for the error. If they no longer meet the WAC criteria because of expanding UGAs, etc. then they can come out of ARL for those other reasons.

Chairman Russell asked Mr. Carter or the planners if there were any other timberlands in Lewis County connected to a 5000 acre block of FRL that could be designated local importance. Mr. Carter stated the Board thought there were three and Mr. Butler thought there half a dozen.

D. Update on Subarea Plan

Mr. Basler stated the final tweaks on the subarea plan are being made as the hearing phase approaches. There will be a workshop on October 6 at the Toledo Middle School from 5:00 to 7:00. Mr. Basler and Mr. McCormick will both be there. It will be an informal setting with maps of the current boundaries of the subarea plan and some handouts.

Mr. Basler has called those involved and he will send out a mailer. Some individuals have been cut out because the BOCC stated they would not force anyone to be within the boundary areas if they do not wish to be. Mr. Basler and Mr. McCormick met with those individuals and explained what it meant to not be included and that the Board might not be inclined to include them in a few years if the property owners change their minds.

This open house will lead up to a workshop on October 11 before the Planning Commission; a public hearing is scheduled for November 10. The BOCC public hearing will be in December.

On a parallel track with the subarea plan is the capital facilities element and how that relates to the economic Urban Growth Areas. A capital facilities element is needed before drawing an economic urban growth boundary. The State confirmed that and the best option at this time is to have those areas set aside as urban reserve zones. That issue will also be before the Planning Commission at the next meeting, and it will be a chapter added to the development code. The urban reserve zone establishes minimum acreage which is 20 acres, and those areas are already zoned RDD-20. The urban reserve zones will act as placeholders to give the county time to go to the next phase of working on the capital facilities element. Running concurrently with that is the utility plan between Winlock, Toledo and Vader. That is instrumental in tying in with the economic urban growth areas once they are established.

Chairman Russell asked if the hearing was on the actual boundaries of the [urban] reserve areas. Mr. Basler stated people will continue doing what they are doing; it establishes the acreage which is already 20 acres. These are not economic urban growth boundaries that the original plan proposed.

Mr. Basler stated there were two areas at the southern border of the county to be held in urban reserve but those have been taken off because there is no way to defend them. They are not close enough to any city and looking ahead there is no economic development that is going to occur.

Mr. Basler stated a summary paper has been prepared to explain what has occurred since last December and where the county is going since that time.

Chairman Russell asked if the subarea plan is something the BOCC would like to have on their calendar prior to the end of the year. Mr. Basler stated December 5 is the public hearing for the urban reserve zone.

Commissioner Mahoney asked if the subarea plan is formalized, the reserved areas, how does the designation affect development within those areas. Mr. Basler stated the urban reserve zone requires 20 acre tracts and that's what the zoning is currently. Commissioner Mahoney asked if it prevents homes from being built. Mr. Basler stated it does not change anything except as acting as a placeholder.

IV. Good of the Order

Mr. Lyle Hojem commented on the determination of ag land in Lewis County. He stated GIS has all the slopes that are too steep to be farmed. He also stated that many farm plans have soils identified. These sources would be a way to get [zoning] done at one time and get it done correctly.

Mr. Bob Kramer, 229 Rogers Rd., Chehalis, spoke to the fencing code. The newest draft 17.140 (A)(3) speaks to "supporting members of a fence…." The meeting notes from the last meeting state the code is written in the International Building Code (IBC). The IBC states that a fence may not be placed that is over 6 feet. That needs to be referred to with the adjective "a" because there is a loophole there depending on who is interpreting the code.

Commissioner Davis asked if staff is still working on putting together the regulations for the events code. Mr. Deitrick stated that was correct; staff is collecting information from people and agencies that might have an interest in it. They will be notified and be presented with the information.

Commissioner Davis read an article from the newspaper which was a misinterpretation of the code by a bureaucrat. He stated it is very challenging for this group and staff to put something together that will fit every situation in the future. He stressed caution.

Chairman Russell asked if there could be an exemption for pre-existing events or meetings. Possible language could be "any meeting or event with a documented history in the county for the last two years would be exempt". He asked if this could be done legally.

Mr. Carter stated one of the drafts included grandfathering certain existing meetings, such as the Packwood Flea Market, but it has said it needs to be something that is sponsored by community organizations. He does not remember how "community organizations" is defined but there was an attempt to make sure that such things as the flea market would continue and be permitted or grandfathered under the provision. We must be careful that there is not discrimination that occurs where certain kinds of events are permitted that are indistinguishable from others.

V. Adjourn

A motion was made and seconded to adjourn. Adjournment was at 8:28 p.m.